

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**BTL INDUSTRIES, INC.,**

**Plaintiff,**

**v.**

**ALLERGAN USA, INC.,  
ALLERGAN, INC., ZELTIQ  
AESTHETICS, INC., ZIMMER  
MEDIZINSYSTEMS  
CORPORATION, AND ZIMMER  
MEDIZINSYSTEME GMBH,**

**Defendants.**

**Civil Action No. 19-2356-CFC**

**AFFIDAVIT OF ARMIN ZIMMER IN SUPPORT OF DEFENDANT  
ZIMMER MEDIZINSYSTEME GMBH'S MOTION TO DISMISS**

I, Armin Zimmer, declare:

1. My name is Armin Zimmer, I am over the age of 18 years, and I am the chief executive officer ("CEO") of Zimmer MedizinSysteme GmbH.
2. Based on my position, experience, and review of relevant corporate records and information, I have personal knowledge of the facts set forth below, which I believe to be truthful and accurate, and to which I could and would competently testify if called as a witness.

3. Zimmer MedizinSysteme GmbH is a company incorporated under the laws of Germany. Zimmer MedizinSysteme GmbH's headquarters are located in Neu-Ulm, Germany.

4. Zimmer MedizinSysteme GmbH is not registered to do business anywhere in the United States.

5. Zimmer MedizinSysteme GmbH does not now conduct and has never conducted any business operations in the United States. Zimmer MedizinSysteme GmbH does not lease or own any offices or facilities in the United States, and it has no employees in the United States.

6. Zimmer MedizinSysteme GmbH does not now conduct, nor has it ever conducted, any business operations in Delaware. Zimmer MedizinSysteme GmbH does not manufacture, import, distribute, market, promote, or sell any products or services in Delaware. Zimmer MedizinSystems Corporation does not lease or own any offices or facilities in Delaware. Zimmer MedizinSysteme GmbH has no employees in Delaware, and it does not send agents to solicit or conduct business in Delaware.

7. Zimmer MedizinSysteme GmbH has no corporate filings on record with the Delaware Secretary of State. It has never been registered to do business in Delaware. It has never designated or maintained an agent for service of process in

Delaware. Zimmer MedizinSysteme GmbH has never filed any lawsuit in state or federal court in Delaware.

8. Zimmer MedizinSysteme GmbH does not derive any revenue from sales in Delaware.

9. Zimmer MedizinSysteme GmbH has never manufactured, imported, distributed, marketed, promoted, nor sold CoolTone™ devices in the United States.

10. Zimmer MedizinSysteme GmbH manufactures the CoolTone™ devices in Germany.

11. Attached hereto as Exhibit A is a true and correct copy of excerpts of the Collaboration and Distribution Agreement by and between Zeltiq Aesthetics, Inc. and Zimmer MedizinSysteme GmbH, [REDACTED]

12. Pursuant to that Collaboration and Distribution Agreement, Zimmer MedizinSysteme GmbH supplies CoolTone™ devices to Zeltiq Aesthetics, Inc. through transactions that occur in Germany. Zimmer MedizinSysteme GmbH sells and transfers title to the CoolTone™ devices to Zeltiq Aesthetics, Inc. in Germany.

13. Zimmer MedizinSysteme GmbH does not import CoolTone™ devices into the United States. Zimmer MedizinSysteme GmbH is not involved in the distribution, offers for sale, or sales of the CoolTone™ devices in the United States. Customers in the United States (including customers in Delaware) cannot purchase CoolTone™ devices directly from Zimmer MedizinSysteme GmbH.

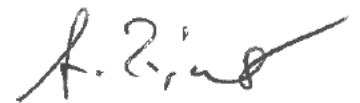
Zimmer MedizinSysteme GmbH has never shipped a CoolTone™ device to a customer in Delaware or anywhere else in the United States.

14. Zimmer MedizinSysteme GmbH receives payments for CoolTone™ devices from Zeltiq Aesthetics, Inc. in Germany, based on a contractually-determined supply price. Zimmer MedizinSysteme GmbH does not receive any revenue from the sale of CoolTone™ devices in the United States or anywhere else in the world.

15. Zimmer MedizinSysteme GmbH has never manufactured, imported, distributed, marketed, promoted, nor sold CoolSculpting® devices in the United States. Zimmer MedizinSysteme GmbH is not involved in any activities related to the CoolSculpting® devices. Zimmer MedizinSysteme GmbH does not receive any revenue from the sale of CoolSculpting® devices in the United States or anywhere else in the world.

I certify under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on April 16, 2020, in Neu-Ulm, Germany



Armin Zimmer  
CEO  
Zimmer MedizinSysteme GmbH

**CERTIFICATE OF SERVICE**

I hereby certify that on April 17, 2020, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on April 17, 2020, upon the following in the manner indicated:

Karen E. Keller, Esquire  
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1105 North Market Street, 12th Floor  
Wilmington, DE 19801  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

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STERNE, KESSLER, GOLDSTEIN  
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1100 New York Avenue, NW, Suite 600  
Washington, DC 20005  
*Attorneys for Plaintiff*

*VIA ELECTRONIC MAIL*

*/s/ Jack B. Blumenfeld*

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Jack B. Blumenfeld (#1014)

**REDACTED PUBLIC VERSION**

# **EXHIBIT A**

**COLLABORATION AND DISTRIBUTION AGREEMENT**

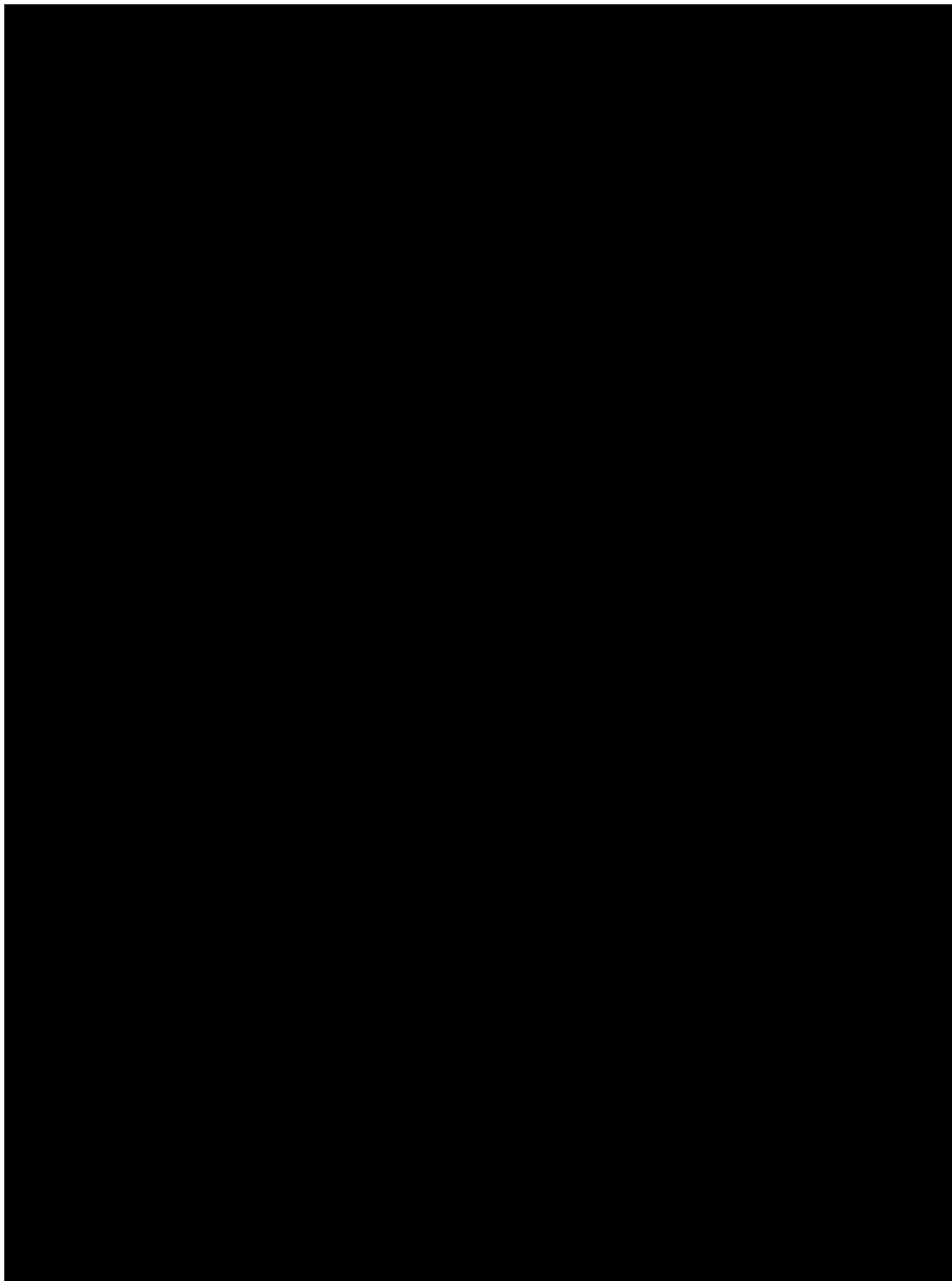
**BY AND BETWEEN**

**ZELTIQ AESTHETICS, INC.**

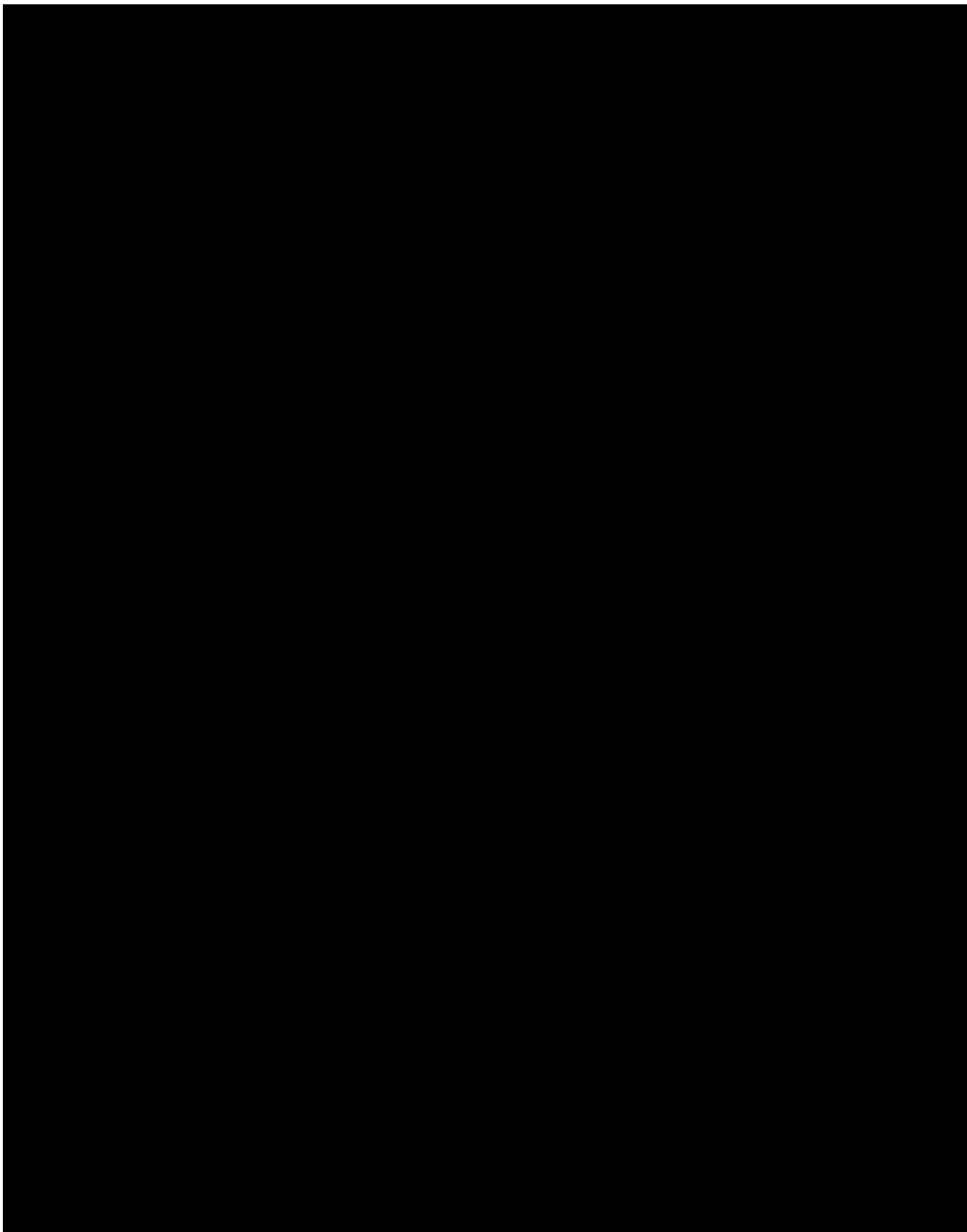
**AND**

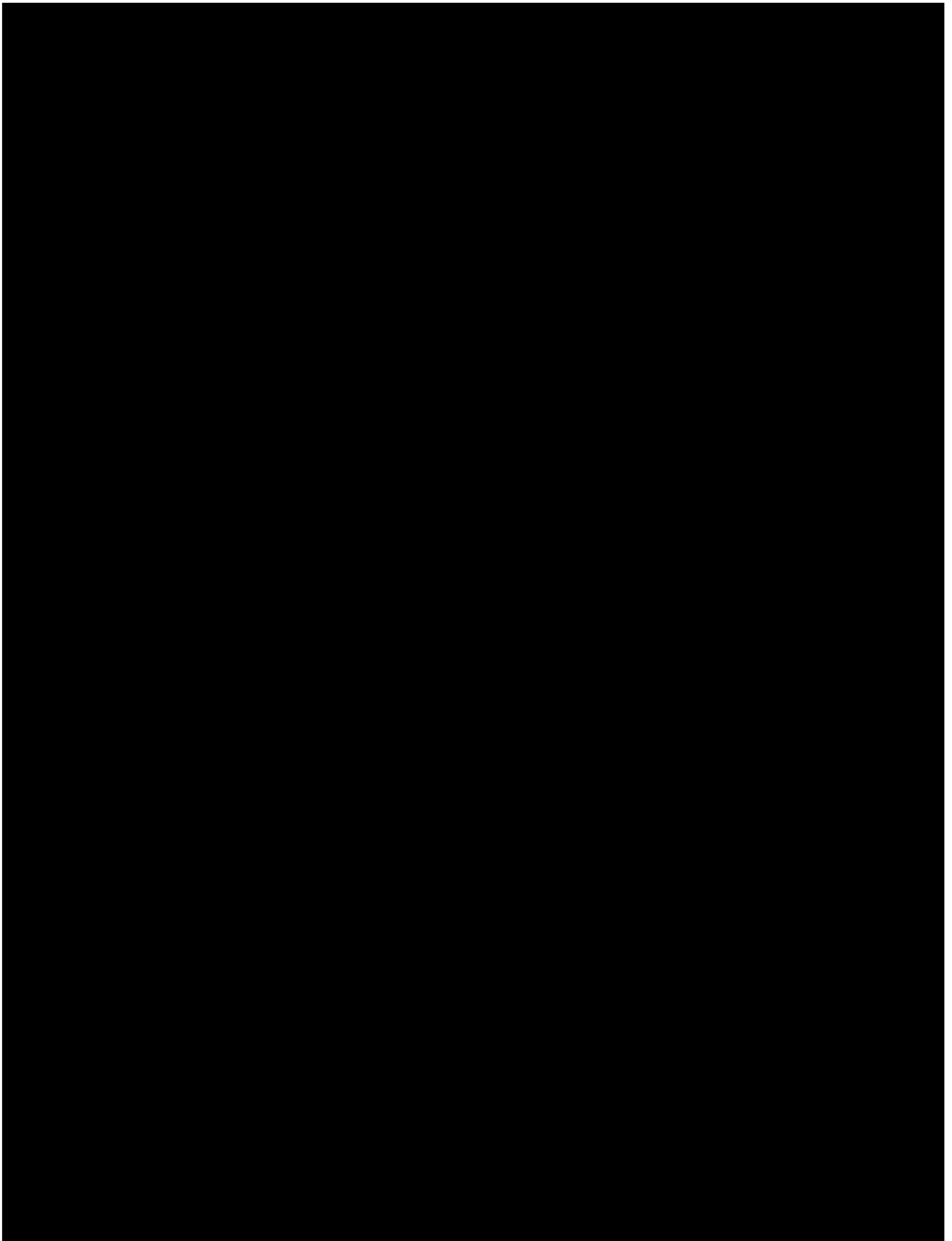
**ZIMMER MEDIZINSYSTEME GMBH**

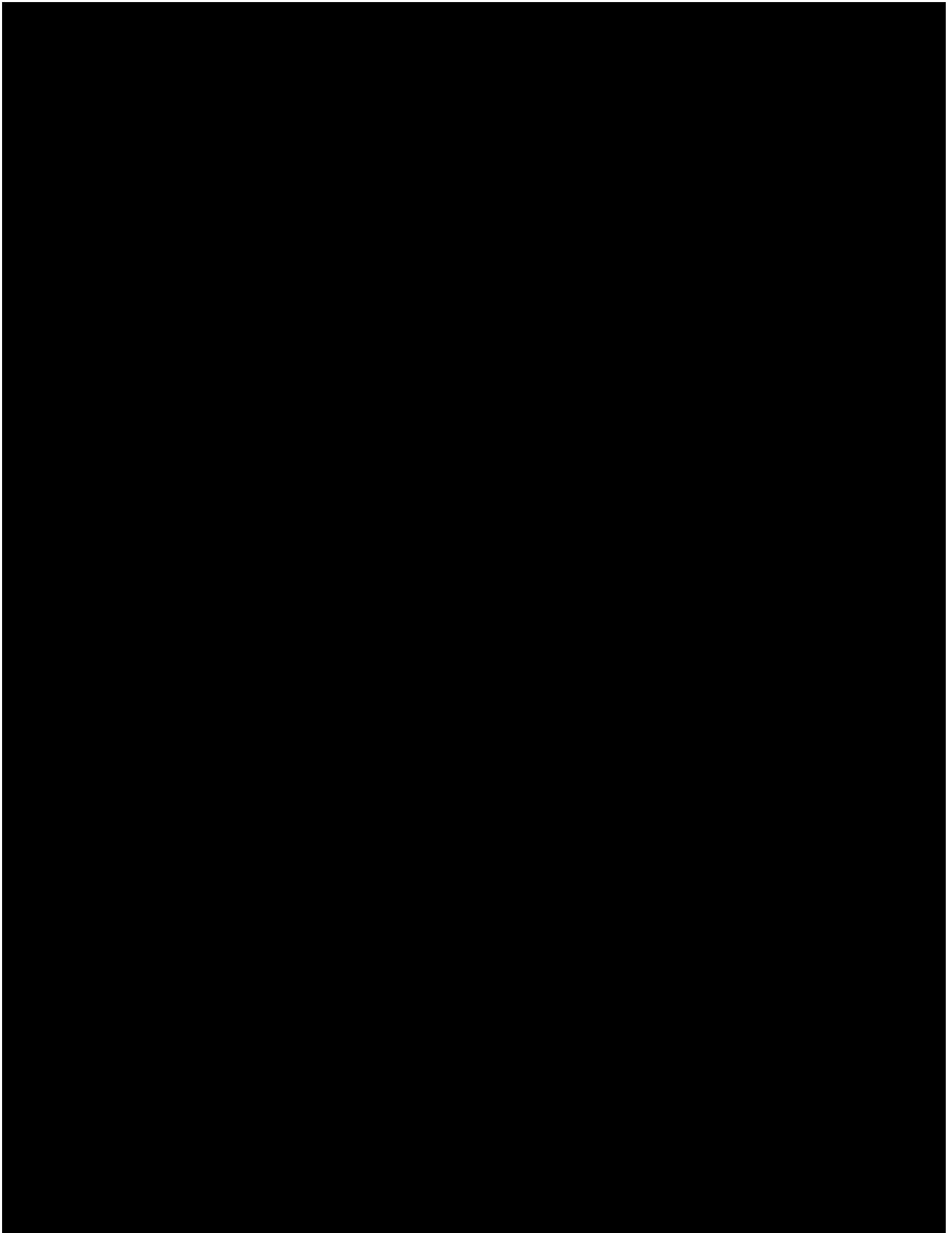


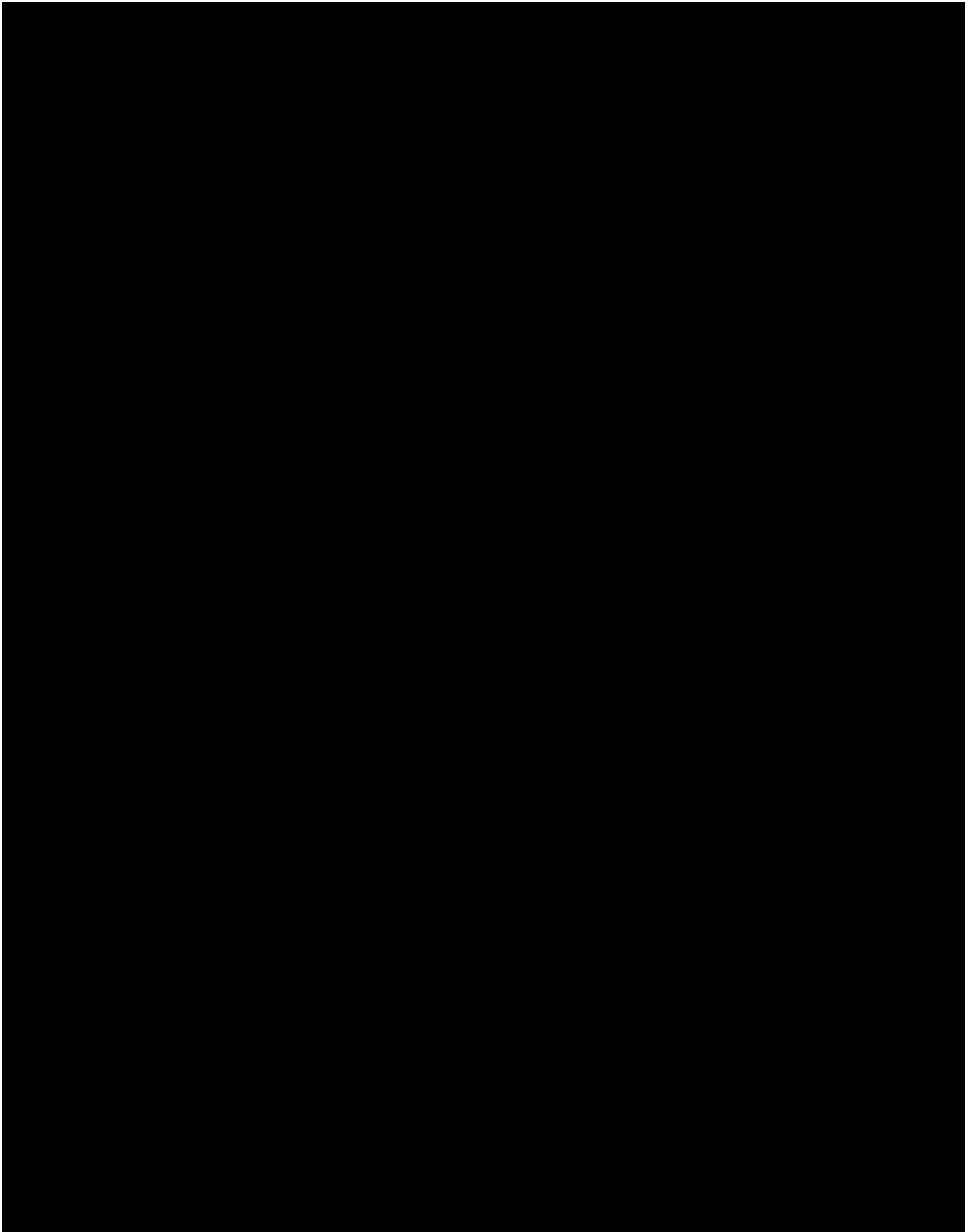


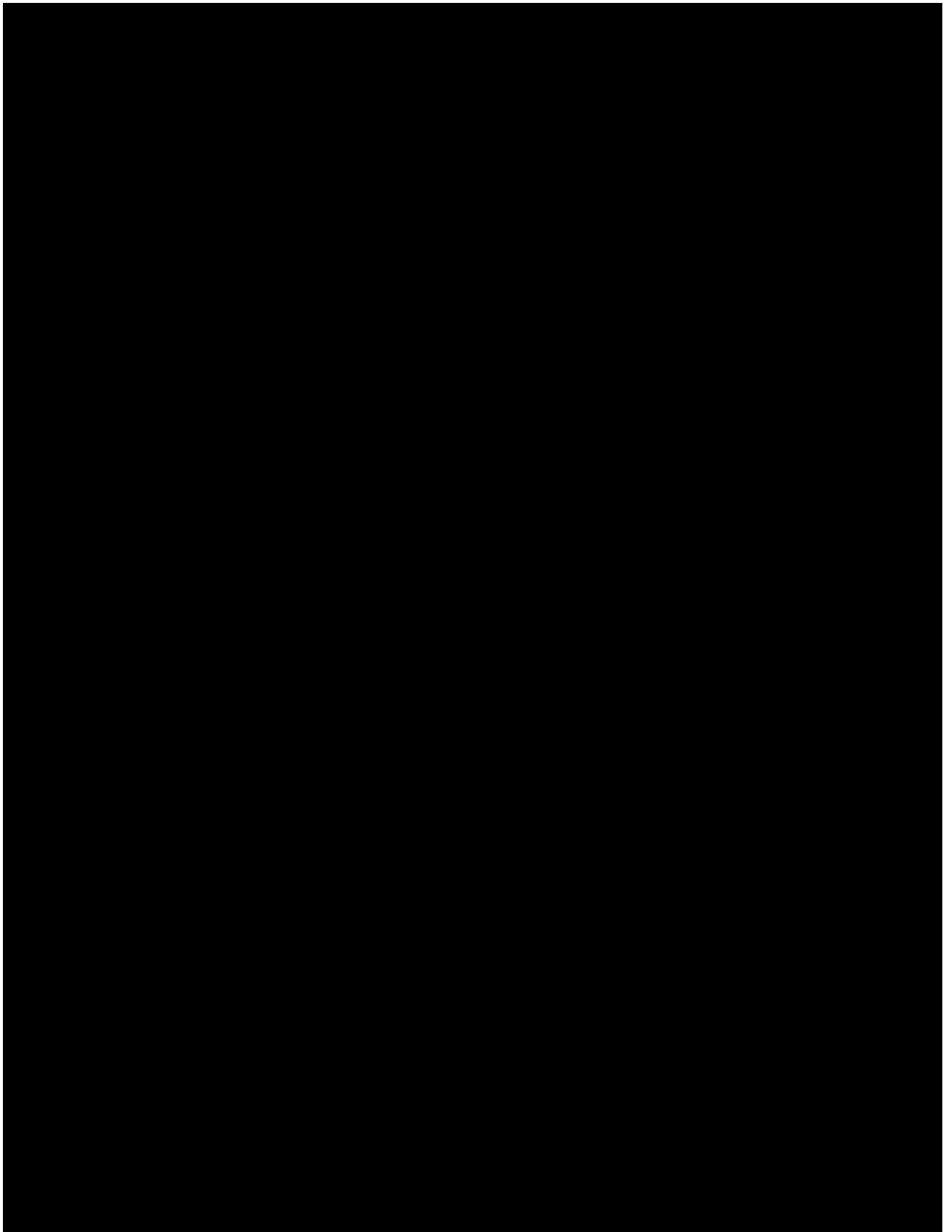


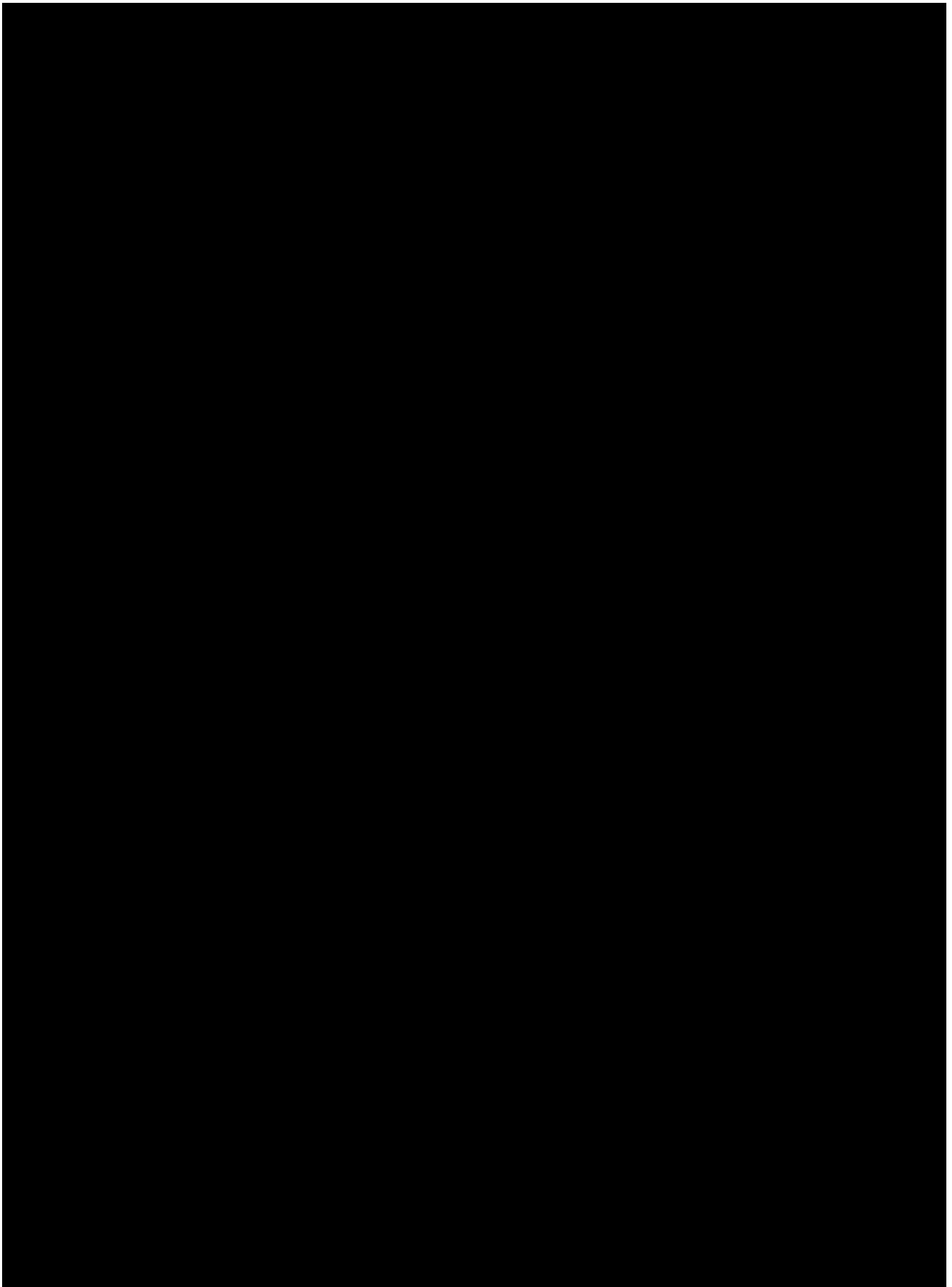


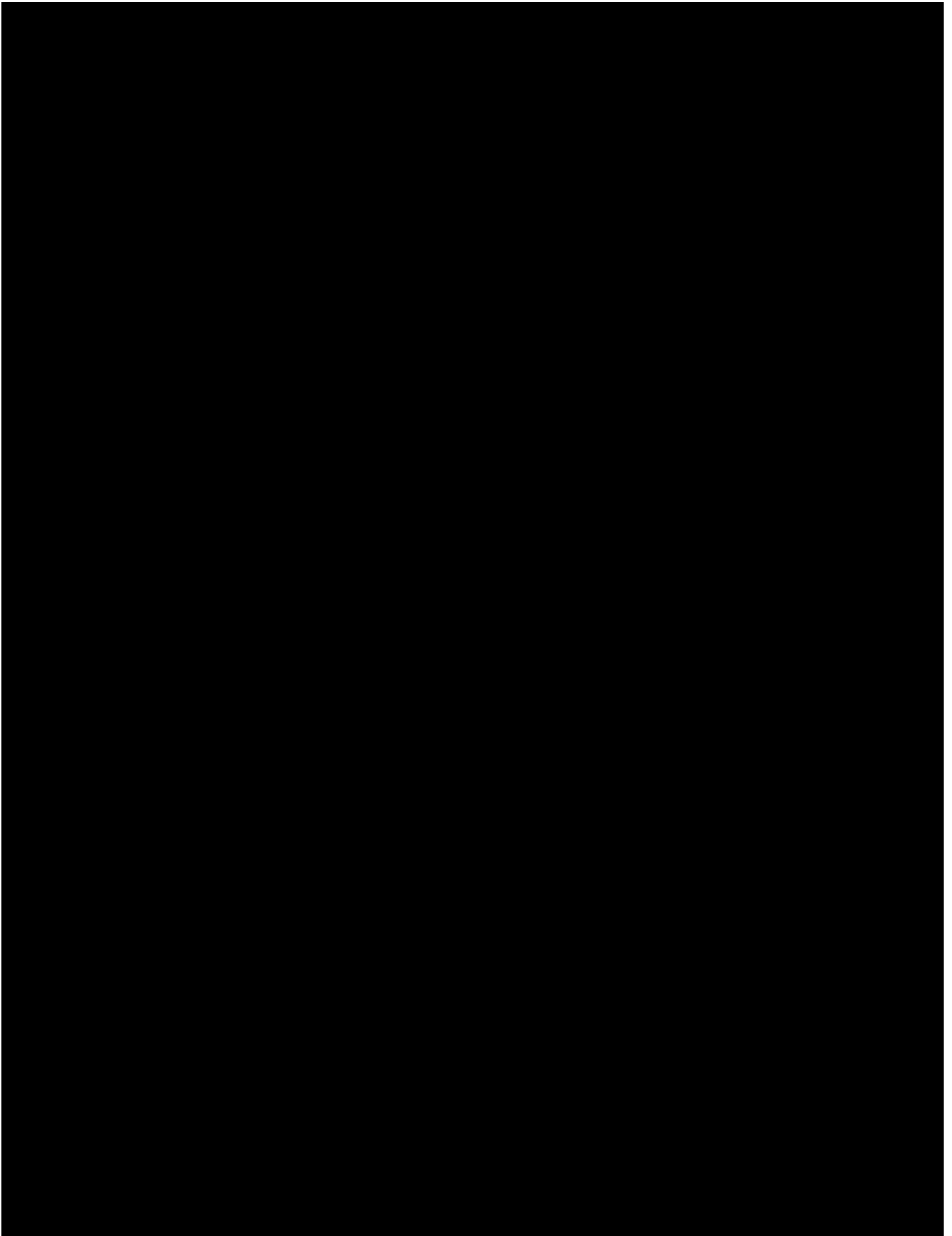


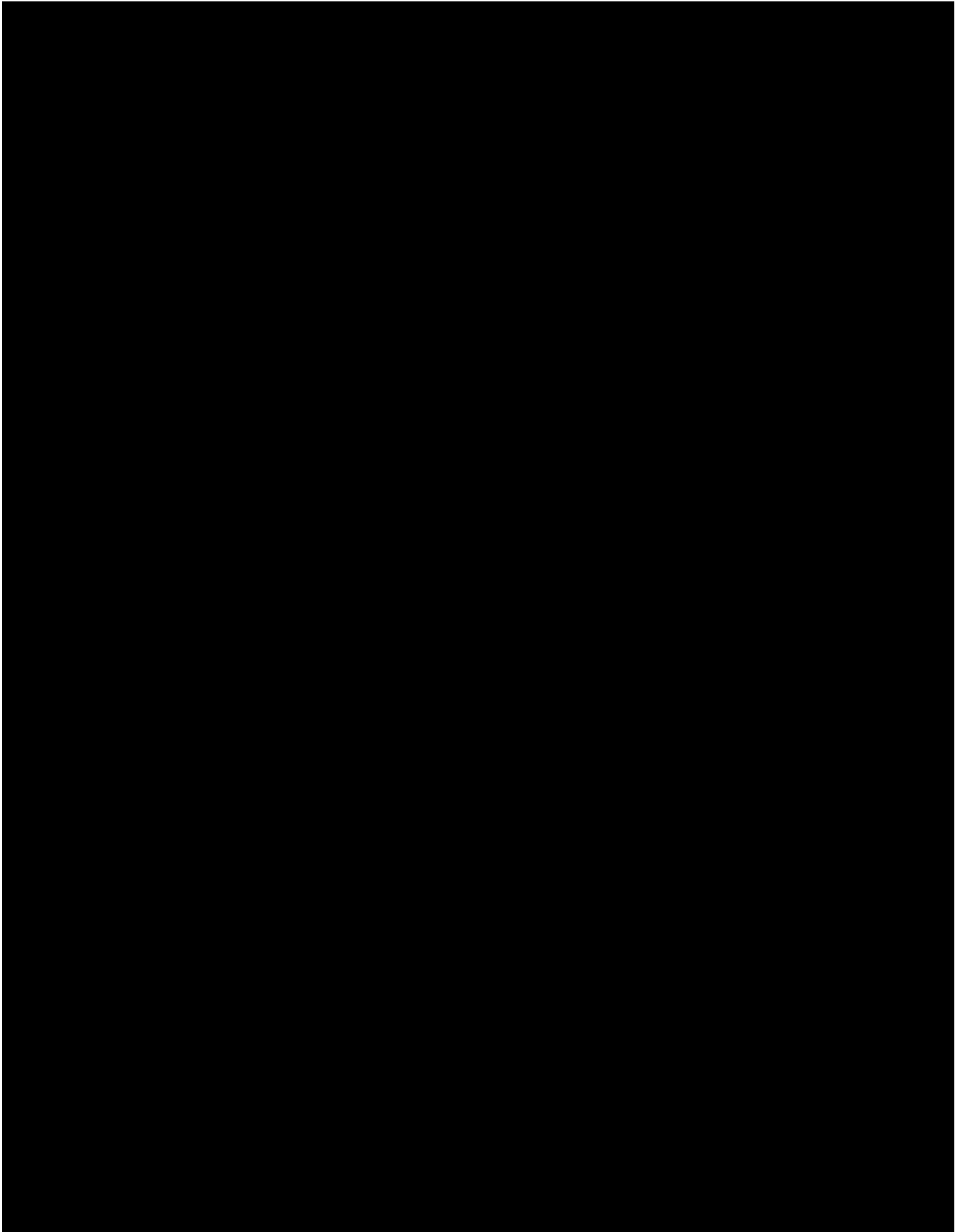




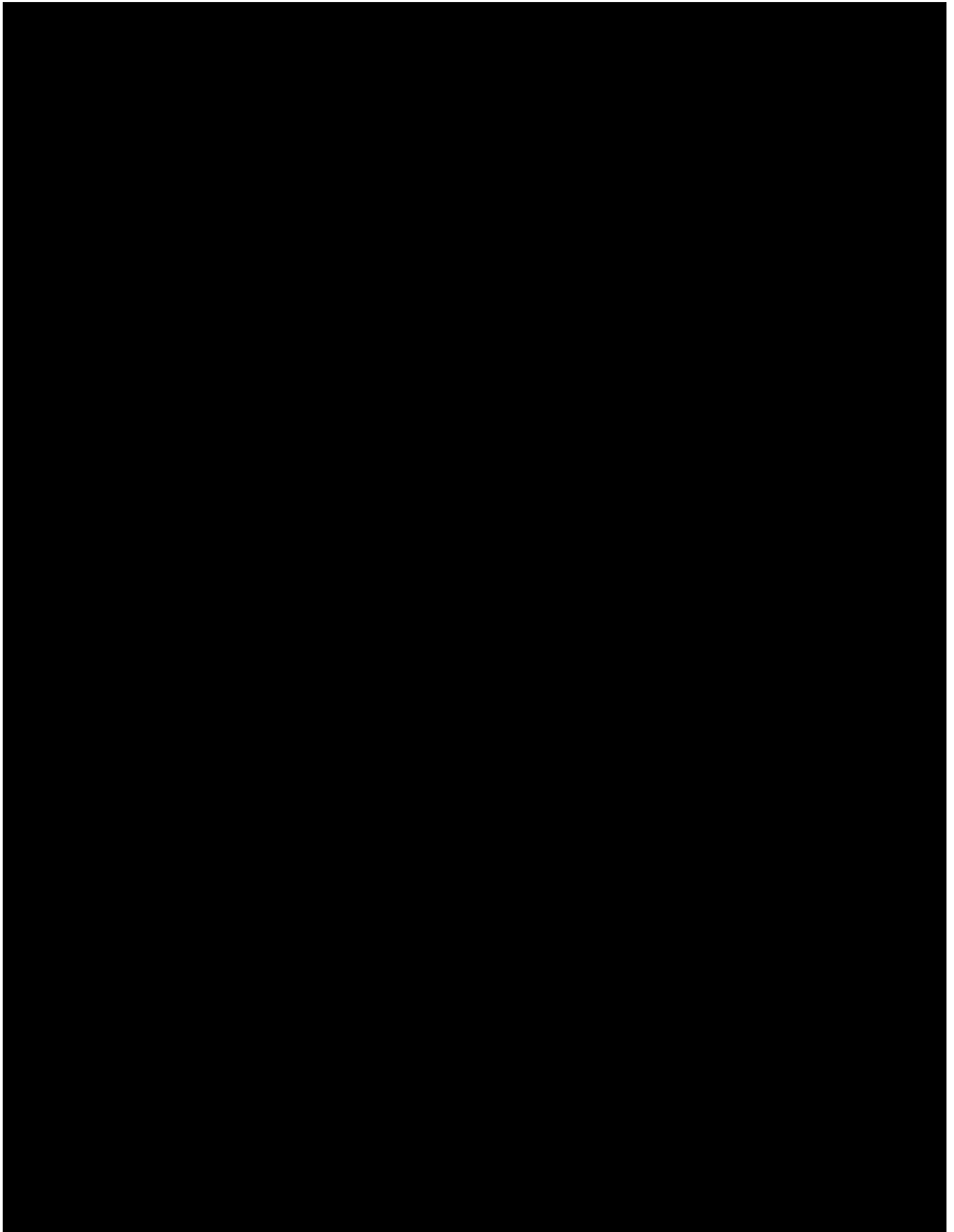


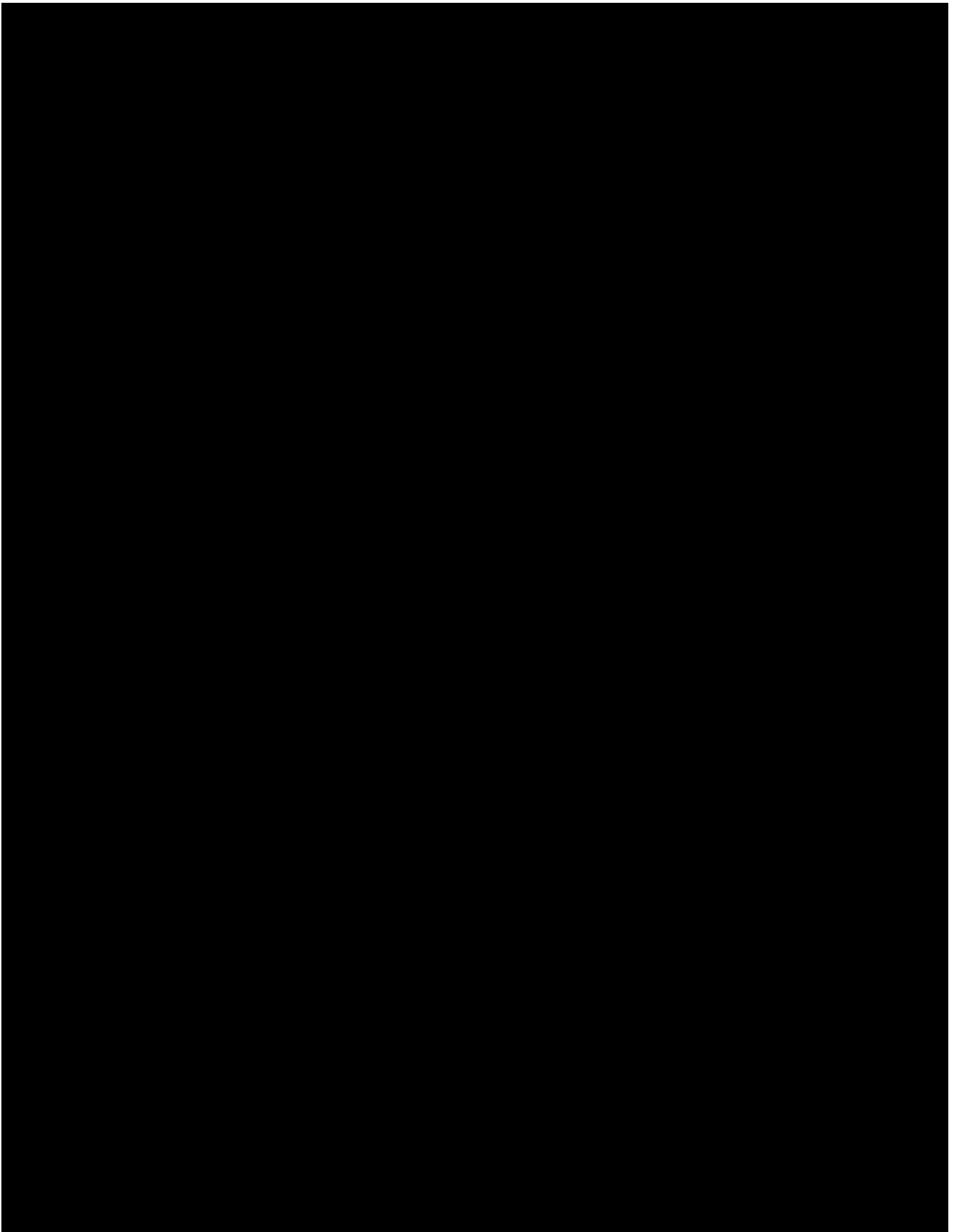


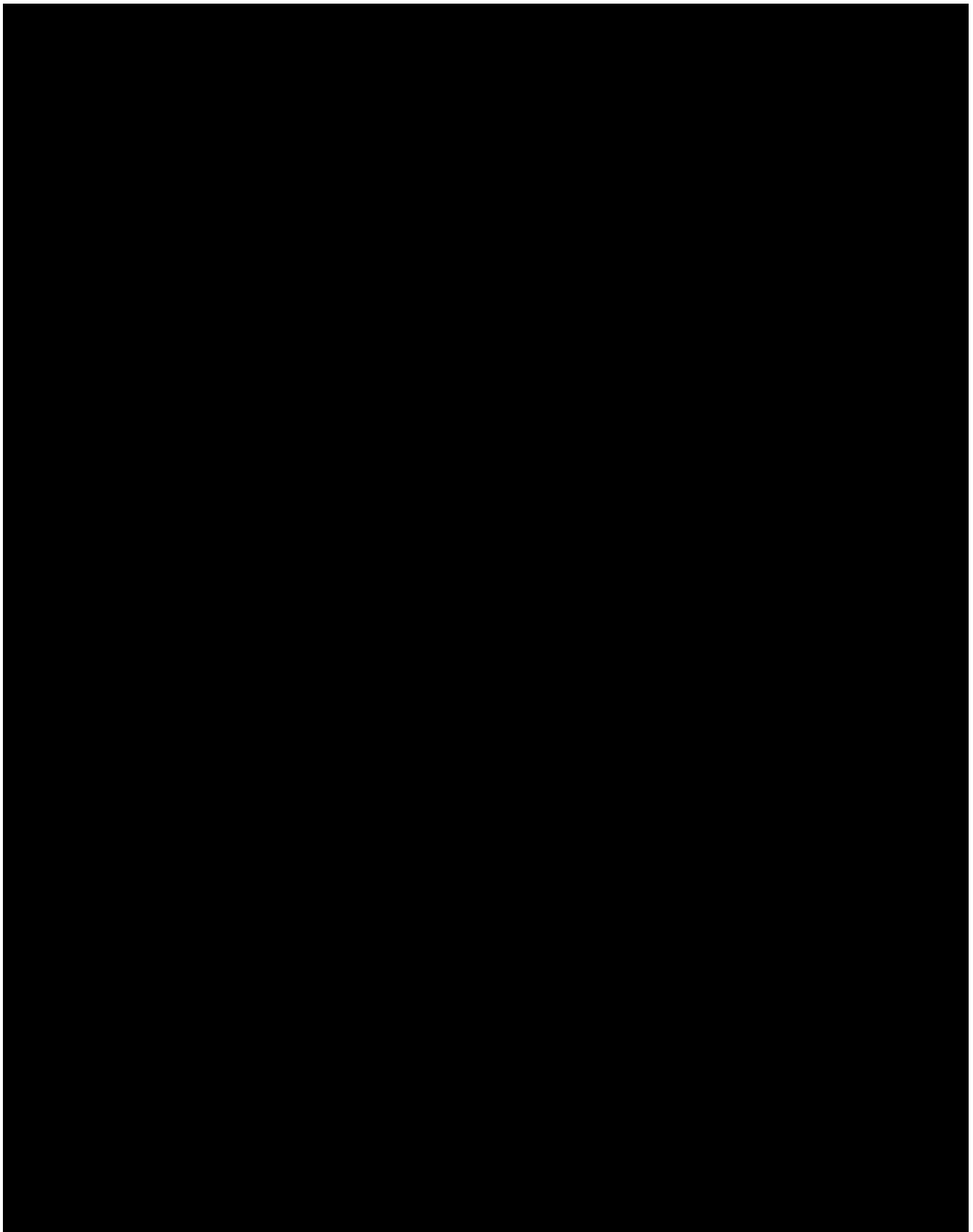


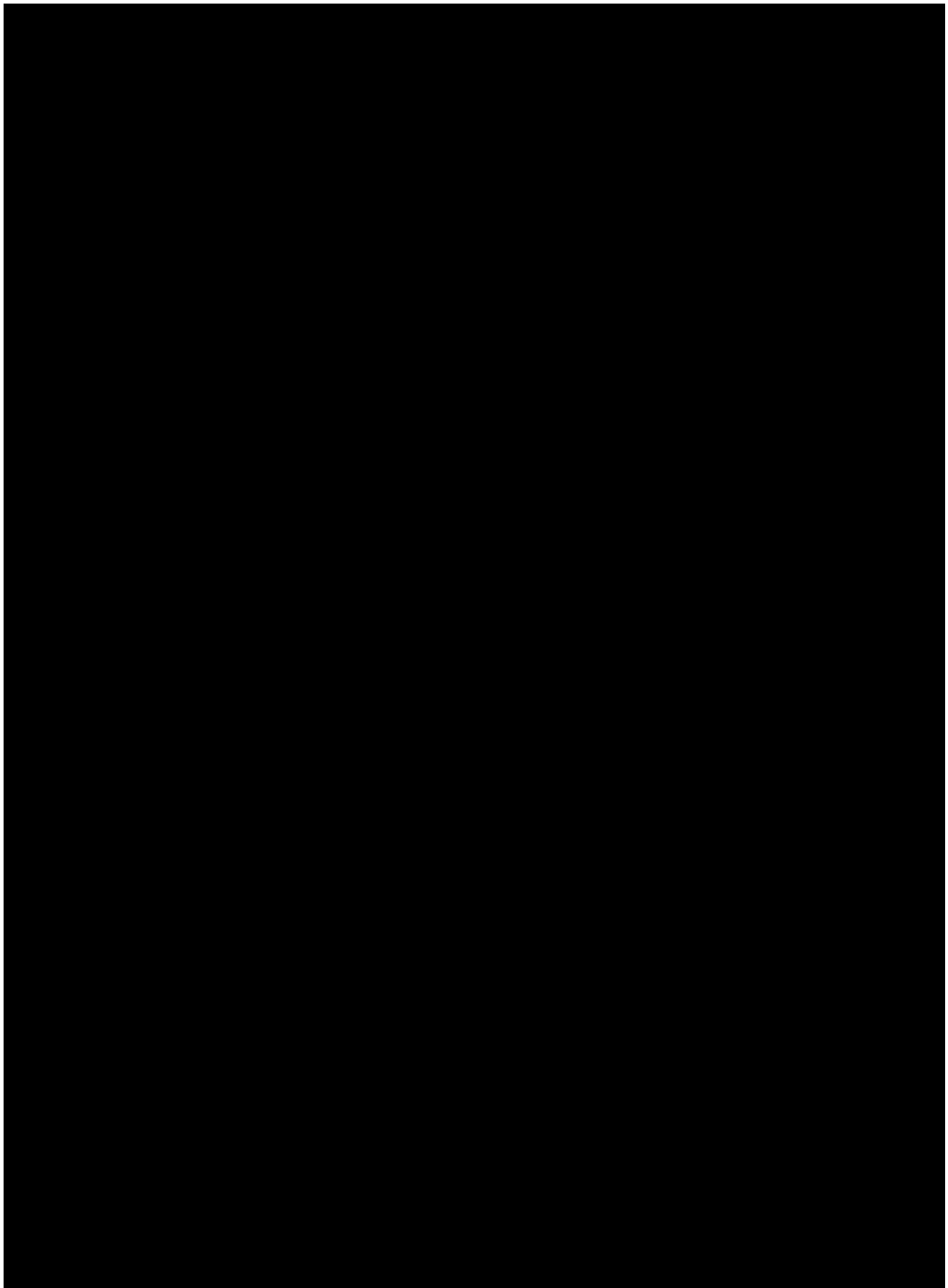


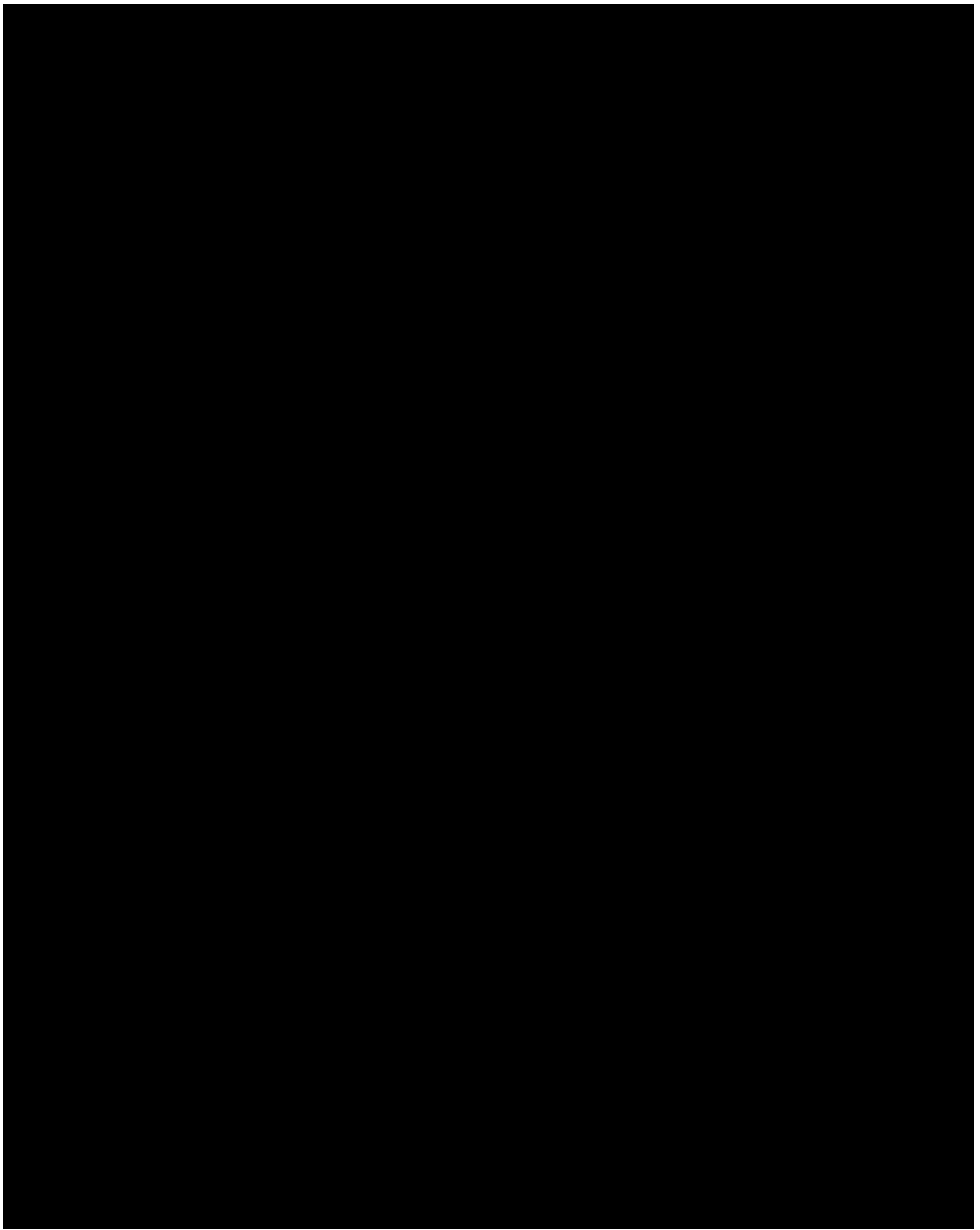













IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

ZIMMER MEDIZINSYSTEME GmbH

By   
Name: Armin Zimmer  
Title: President

ZELTIQ AESTHETICS, INC.

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

ZIMMER MEDIZINSYSTEME GmbH

By \_\_\_\_\_  
Name:  
Title:

ZELTIQ AESTHETICS, INC.

By  \_\_\_\_\_  
Name: Sigurd Kirk  
Title: Vice President